IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 79-1112 and Consolidated Cases

CHEMICAL MANUFACTURERS ASSOCIATION, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

SETTLEMENT AGREEMENT

Industry petitioners and respondents United States Environmental Protection Agency, et al., ("EPA") intending to be bound by this document, hereby stipulate and agree as follows:

1. This agreement is intended to act as a settlement of all of the issues raised by industry petitioners in these consolidated cases.

2. The "dual definition of source" and "reconstruction" issues are moot, because of the publication of final regulations deleting those requirements. 46 Fed. Reg. 50766 (October 14, 1981).

3. EPA has proposed to delete the "vessel emissions" requirements and stayed them pending final action on the proposal. 46 Fed. Reg. 61612, 61613 (December 17, 1981).

EXHIBIT H

EPA shall make good faith best efforts to take final action on the proposal by May 14, 1982.

4. EPA shall propose in the Federal Register the regulatory amendments which appear in Exhibit A to this agreement (the "Exhibit A amendments") or such amendments as would have substantially the same effect as the Exhibit A amendments. EPA shall make good faith best efforts (a) to do so within 90 days from the date of execution of this agreement and (b) to take final action on the proposed amendments within 150 days from the date the proposal appears in the Federal Register. In addition, EPA shall not extend the period for initial comment on the proposed amendments beyond 60 days.

5. The American Iron and Steel Institute, et al., petitioners in No. 80-2223, do not join in this settlement with respect to the language set forth in Exhibit A at paragraphs A(4), B(4), C(5), D(5) and E(5) (relating to the non-inclusion of increases and decreases of fugitive emissions in determinations of whether a change at a stationary source results in a significant net emissions increase) as it applies to the iron and steel manufacturing industry and reserve the right to challenge that language, if promulgated with substantially the same effect, in a court with proper jurisduction.

6. EPA currently plans to begin rulemaking within the next several months to revise the national ambient air quality standards ("NAAQS") for "particulate matter". EPA intends to propose, not only new concentration levels for the NAAQS, but

also a new definition of "particulate matter" which would exclude particles above a size that EPA will determine after further analysis of the relevant scientific information. When EPA proposes a new size cutoff for purposes of the NAAQS, it shall also propose (a) a new size cutoff for PSD purposes that would remain in effect indefinitely (the "permanent PSD cutoff") and (b) an interim size cutoff for PSD purposes that would remain in effect until EPA takes final action on the permanent PSD cutoff. The interim cutoff will exclude only those particles which clearly appear not to pose substantial health and welfare risks and therefore are highly likely to be excluded permanently. EPA shall make good faith best efforts (a) to propose the permanent and interim PSD cutoffs by June 1, 1982, and (b) to take final action on the interim PSD cutoff by September 30, 1982. In addition, EPA shall not extend the period for initial comment on the interim PSD cutoff beyond 45 days.

7. On or before the date that it proposes the amendments described in paragraph 4 above, EPA shall also publish in substance the following guidance in the Federal Register:

> a. If a violation of a PSD increment is discovered, the state has an obligation under 40 C.F.R. 51.24(a)(3) to adopt such revisions to its state implementation plan ("SIP") as would be necessary to cure the violation, and to submit them to EPA for approval within 60 days after discovery of the violation or within such longer period as EPA may determine after consultation with the state. EPA will postpone, until it takes final action on a permanent PSD cutoff for particulate matter, the time by which a state must submit a SIP revision to

cure a violation of an increment for particulate matter, if the state requests such a postponement.

b. Under any basic permit program that consists of the requirements outlined by 40 C.F.R. 51.18(a)-(i), and hence no requirement relating to PSD increments, the permitting authority may issue a permit even if the modeling shows that the project in question would cause or contribute to a violation of a PSD increment for particulate matter.

c. In revising the Emissions Offset Interpretative Ruling in January 1979 and in providing guidance to the states for the preparation of SIP revisions to meet the requirements of Section 173 of the Act, EPA stated that "in determining the lowest achievable emission rate (LAER), the reviewing authority may consider transfer of technology from one source type to another where such technology is applicable." 44 Fed. Reg. 3280 (January 16, 1979); 44 Fed. Reg. 20379 (April 4, 1979). EPA interprets that statement to mean merely that the Agency would not disapprove a SIP revision which required technology transfer for LAER determinations. The statement does not mean that EPA would approve a SIP revision which sought to incorporate the Section 173 requirements only if the revision required technology transfer. To the contrary, an express prohibition against technology transfer in the revision would not be grounds for disapproval.

8. As expeditiously as practicable, EPA shall (a) propose in the Federal Register the regulatory amendments which appear in Exhibit B to this agreement (the "Exhibit B amendments"), or such amendments as would have substantially the same effect as the Exhibit B amendments, and (b) take final action on the proposed amendments. In addition, EPA shall not extend the period for initial comment on the proposed amendments beyond 60 days.

9. EPA shall hold a meeting in the first week of April 1982 to report on its progress in preparing the Federal Register

notice for the proposal of the amendments described in paragraph 8 of this agreement and to receive comment on that progress. EPA shall hold meetings for the same purposes every forty days after the first meeting until the notice appears in the Federal Register. EPA shall invite each of the industry petitioners, and may invite anyone else, to participate in those meetings.

10. Before the Administrator signs the Federal Register notice described in paragraph 9 of this agreement, or the Federal Register notice for the proposed amendments described in paragraph 4, EPA shall provide industry petitioners with an opportunity to review and comment on that notice. EPA may provide anyone else the same opportunity.

11. If an industry petitioner demonstrates to EPA that, in the period before the Agency takes final action on the proposals described in paragraphs 4, 6 or 8, the petitioner will suffer significant harm from one of the provisions under challenge in these cases, then EPA shall consider granting the petitioner interim relief from that provision.

12. If EPA promulgates a final amendment that has substantially the same effect as one of the amendments in 46 Fed. Reg. 61613, Exhibit A or Exhibit B, any industry petitioner who in these cases sought review of the amended provision shall move voluntarily to dismiss its petition as to that provision. To the extent that EPA fails to promulgate final amendments which have

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement this 22nd day of February, 1982.

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